



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

JUL 12 2001

**CERTIFIED MAIL**

**RETURN RECEIPT REQUESTED**

REPLY TO THE ATTENTION OF

**EPA Region 5 Records Ctr.**



**362855**

Re: SPECIAL NOTICE OF LIABILITY for Eagle Zinc Company Site, Montgomery County, Hillsboro, Illinois

Dear Sir or Madam:

The United States Environmental Protection Agency (U.S. EPA or Agency) and the Illinois Environmental Protection Agency (IEPA) have undertaken response actions at the Eagle Zinc Company Site (the Site) pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §9601 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499 (CERCLA). These actions, which include sampling in and around the Site, have documented the release or threatened release of hazardous substances, pollutants, and contaminants at the Site. Specific findings from certain of these studies concerning the Site are presented in the proposed Administrative Order on Consent appended hereto as Enclosure C.

**Additional Response Actions**

Unless U.S. EPA determines that a potentially responsible party (PRP) will voluntarily undertake the response action necessary at the Site, U.S. EPA may, under Section 104 of CERCLA, undertake the response action itself and, under Section 107 of CERCLA, seek reimbursement from PRPs of all costs incurred in connection with the action taken. Such costs may include, but are not limited to, expenditures for investigation, planning, response and enforcement activities. Moreover, under Section 106 of CERCLA, U.S. EPA may order responsible parties to implement relief actions deemed necessary by U.S. EPA to protect the public health, welfare or environment from an imminent and substantial endangerment because of an actual or threatened release of a hazardous substance from a facility.

In addition to those further response actions enumerated above, U.S. EPA may, pursuant to its authorities under CERCLA and other laws, determine that other clean-up activities are necessary to protect public health, welfare and the environment.

**PRP Determination**

Potentially responsible parties (PRPs) under Section 107 of CERCLA include current owners and operators of the Site and former owners and operators of the Site at the time of disposal of hazardous substances, as well as persons who owned or possessed hazardous substances and arranged for disposal, treatment, or transportation of such hazardous substances and persons who accepted hazardous substances for transportation for disposal or treatment to a facility selected by such transporter. U.S. EPA has information indicating that you are a PRP with respect to the Site. By this letter, U.S. EPA notifies you of your potential liability with regard to this matter and encourages you, as a PRP, to reimburse U.S. EPA for its costs incurred to date and to voluntarily perform or finance the response activities that the U.S. EPA has determined or will determine are required at the Site.

**Special Notice and Negotiation**

Pursuant to Section 122(e)(1) of CERCLA, U.S. EPA has determined that a period of negotiation may facilitate an agreement between the Site's PRPs and U.S. EPA for implementation or financing of the response action. Accordingly, U.S. EPA is contacting PRPs identified for the Site to resolve their liability with respect to the Site. To assist the PRPs in negotiating with U.S. EPA concerning this matter, attached to this letter is a list of the names and addresses of other PRPs to whom this notification is being sent. It should be noted that inclusion on or exclusion from this list does not constitute a final determination by U.S. EPA concerning the liability of any party for remediation of the Site or for payment of past costs.

Upon your receipt of this Special Notice, you will have a maximum of 60 days to coordinate with any PRPs and to present to U.S. EPA a "good faith offer" to conduct and/or finance the remedial action to negotiate the terms of an administrative order on consent. In accordance with the requirements of Section 122(e)(2), during this 60-day moratorium, U.S. EPA will not commence remedial action at the Site. U.S. EPA may, however, commence any additional studies or investigations authorized under Section 104(b), and take any action at the Site should a significant threat to human health or the environment arise during the negotiation period.

**Good Faith Offer**

A "good faith offer" as referenced above shall include the following:

- \* a statement of the PRPs' willingness to conduct or finance a CERCLA Remedial Investigation and Feasibility Study (RI/FS) which are consistent with the proposed AOC and Statement of Work (SOW) and which provide a sufficient basis for further negotiations in light of U.S. EPA's SOW;

- \* a detailed response to, and detailed comments, if any, on the attached proposed AOC and SOW. If your offer contemplates modifications to the AOC or SOW, please make revisions or edits to the enclosed draft and submit a version to U.S. EPA showing any such modifications. Your response should provide reasons for or the basis of major revisions to the attached proposal;
- \* a demonstration of the PRPs' technical capability to undertake the RI/FS. This includes that the PRPs identify the firm expected to conduct the work, or that the PRPs identify the process they will undertake to select a firm;
- \* a demonstration of the PRPs' capability to finance the RI/FS;
- \* a statement of the PRPs' willingness to reimburse U.S. EPA for past response and oversight costs; and
- \* the name, address, and phone number of the party or steering committee who will represent the PRPs in negotiations.

If U.S. EPA receives from the PRPs within the 60 day calendar period a written "good faith offer" which demonstrates the PRPs' qualifications and willingness to conduct or finance the RI/FS consistent with the attached AOC and SOW, U.S. EPA may extend its moratorium on commencement of the response action work up to an additional 30 calendar days. The purpose of this additional time is to allow the PRPs and U.S. EPA a period of time to finalize the settlement.

If a "good faith" proposal is not received within the initial 60-day moratorium, U.S. EPA, pursuant to Section 122(e)(4), may proceed to immediately undertake such further action as is authorized by law, utilizing public funds available to the U.S. EPA.

#### **Demand for Costs Incurred**

As mentioned above, in accordance with CERCLA and other authorities, U.S. EPA has already undertaken certain actions and incurred certain costs to investigate conditions at the Site and initiated enforcement activities. As soon as practicable, U.S. EPA will send Respondent(s) a bill for "past response costs" at the Site. U.S. EPA's bill will include an Itemized Cost Summary. "Past response costs" are all costs, including, but not limited to, direct and indirect costs and interest, that the United States, its employees, agents, contractors, consultants, and other authorized representatives incurred and paid with regard to the Site. The U.S. EPA anticipates expending additional funds for response activities at the Site under the authority of CERCLA and other laws. In accordance with Section 107(a) of CERCLA, demand is also hereby made under these authorities for payment of all future costs that U.S. EPA may accrue in regard to the Site.

**Ability to Pay- Future Financial Review**

If your company wishes to settle, but would face a severe financial hardship by remitting the full payment amount, you may request that the U.S. EPA review your financial ability to pay. Under U.S. EPA policy, it is possible in appropriate circumstances for the payment to be made in installments. This may be considered as part of U.S. EPA's financial review. To process a claim of financial hardship, the U.S. EPA will require you to substantiate that claim by submitting detailed financial documentation. A complete description of the U.S. EPA's financial review process is available upon request.

**PRP List**

As stated above, the attached list of the names and addresses of any other PRPs to whom this notification is being sent is provided to assist you in contacting other PRPs in this matter and to negotiate with U.S. EPA. This list is appended as Enclosure A to this letter. Information regarding a ranking by volume and nature of substances contributed by each PRP, as contemplated by Section 122(e)(4)(A), is not available at this time. However, the AOC attached hereto as Enclosure C sets forth the areas within the Site with which each PRP is associated.

**Initial Conference**

To further facilitate your and any other PRPs' ability to present a "good faith offer" within the 60-day time limit, an initial settlement conference will be held. An agenda indicating the topics for discussion is appended as Enclosure B. A draft AOC and a SOW is enclosed as Enclosure C.

**90 Day Deadline**

Except in extraordinary circumstances explained in a written request, U.S. EPA will not grant an additional extension beyond the original 30 day extension period. As stated above, if no agreement can be reached, pursuant to Section 122(e)(4), U.S. EPA may immediately proceed to undertake such further action as authorized by law to conduct an RI/FS at the Site.

**U.S. EPA Notification**

As a potentially responsible party, you should notify U.S. EPA in writing within 10 days of receipt of this letter of your willingness to participate in negotiations to perform or finance the activities described above. If U.S. EPA does not receive a timely response, U.S. EPA will assume that you do not wish to negotiate a resolution of your potential responsibility in connection with the Site and that you have declined any involvement in performing the response activities.

The response should indicate the appropriate names, addresses, and telephone numbers for further contact with you. If you are already involved in discussions with state or local authorities, engaged in voluntary clean-up action or involved in a lawsuit regarding this Site, you should continue such activities as you see fit. This letter is not intended to advise or direct you to restrict or discontinue any such activities; however, you are advised to report the status of those discussions or actions in the response to this letter and to provide a copy of the response to any other parties involved in those discussions or actions. The response letter should be sent to:

Dion Novak  
Remedial Response Branch I, Section II  
U.S. Environmental Protection Agency  
77 W. Jackson Blvd (SR-6J)  
Chicago, Illinois 60604

Thomas Krueger  
Multi-Media Branch II, Section I  
U.S. Environmental Protection Agency  
77 W. Jackson Blvd (C14-J)  
Chicago, Illinois 60604

#### **Natural Resource Trustee Notification**

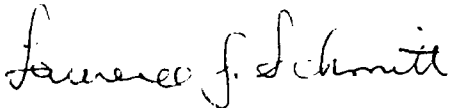
By a copy of this letter, U.S. EPA is notifying the State of Illinois and the Natural Resources Trustees, in accordance with Section 122(j) of CERCLA, of its intent to enter into negotiations concerning the conduct of an RI/FS at the Site, and is also encouraging them to consider *participation in such negotiations.*


#### **Further Information**

If you need further information regarding this letter, you may contact Dion Novak, Remedial Project Manager, at (312) 886-4737. If you have an attorney handling your legal matters, please direct his or her questions to Thomas Krueger, Associate Regional Counsel, at (312) 836-0562.

We hope that you will give this matter your immediate attention.

Sincerely yours,



 Wendy L. Carney, Chief  
Remedial Response Branch #1

Enclosures

cc: (Letter and all Enclosures):

James Richardson #21  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276

Brent Manning, Director  
Illinois Department of Natural Resources  
524 S. 2nd Street  
Springfield, IL 62701-9225

Rick Lanham  
Bureau of Land, Federal Site Remediation Section  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276

## ENCLOSURE A

### POTENTIALLY RESPONSIBLE PARTIES

Note: inclusion on or exclusion from the list does not constitute a final determination by the U.S. EPA concerning the liability of any party for remediation of Site conditions or payment of past costs.

1. Mr. Francis P. McCune  
Attorney  
Eagle-Picher Industries, Inc.  
P.O. Box 779  
Cincinnati, Ohio 45201
2. T. L. Diamond and Company Inc.  
c/o Ms. Lois Kimbol  
Dechert, Price and Rhoads  
4000 Bell Atlantic Tower  
1717 Arch Street  
Philadelphia, Pennsylvania 19103
3. Mr. Donald J. McConnell  
Corporate Environmental Counsel  
The Sherwin-Williams Company  
101 Prospect Avenue N.W.  
Cleveland, Ohio 44115

**ENCLOSURE B**

**AGENDA FOR MEETING**

Location: Metcalf Building  
77 West Jackson Blvd  
Chicago, IL 60604  
6<sup>th</sup> Floor (Room 611A)

Date: July 31, 2001 at 10 a.m.

Topics for discussion:

- \*Background Information on the Site
- \*Response Activities to Date
- \*Liability of Responsible Parties Under CERCLA
- \*Explanation of Expected PRP Response Activities
- \*Structure of Consent Order Negotiations
- \*Technical and Legal Proposal for the Site



**ENCLOSURE C**

Order on Consent/Scope of Work